



Economic Development, Trade & Banking Committee

ACTION PACKET

COMMITTEE MEETING REPORT
Economic Development, Trade & Banking Committee

4/5/2006 4:45:00PM

Location: 306 HOB

Attendance:

	<i>Present</i>	<i>Absent</i>	<i>Excused</i>
Gus Bilirakis (Chair)	X		
Aaron Bean			X
Dorothy Bendross-Mindingall	X		
Phillip Brutus	X		
Faye Culp	X		
Joyce Cusack	X		
Don Davis	X		
Nancy Detert			X
Michael Grant	X		
Adam Hasner	X		
Charlie Justice			X
Frank Peterman			X
John Quinones	X		
Ken Sorensen	X		
Trudi Williams	X		
Totals:	11	0	4

Committee meeting was reported out: Wednesday, April 05, 2006 6:44:38PM

COMMITTEE MEETING REPORT
Economic Development, Trade & Banking Committee

4/5/2006 4:45:00PM

Location: 306 HOB

HB 839 CS : Homeowners' Associations

☒ *Favorable With Committee Substitute*

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Aaron Bean			X		
Dorothy Bendross-Mindingall	X				
Phillip Brutus	X				
Faye Culp	X				
Joyce Cusack	X				
Don Davis	X				
Nancy Detert			X		
Michael Grant	X				
Adam Hasner				X	
Charlie Justice			X		
Frank Peterman			X		
John Quinones	X				
Ken Sorensen	X				
Trudi Williams	X				
Gus Bilirakis (Chair)	X				
Total Yeas: 10 Total Nays: 0					

HB 839 CS Amendments

Amendment 1 - Strike all

☒ Adopted Without Objection

Amendment 1a

☒ Adopted Without Objection

Amendment 1b

☒ Adopted Without Objection

Committee meeting was reported out: Wednesday, April 05, 2006 6:44:38PM

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

Bill No. HB 839 CS

COUNCIL/COMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> ✓ </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> ✓ </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

(A)

1 Council/Committee hearing bill: Economic Development, Trade &
2 Banking Committee

3 Representative(s) Kottkamp offered the following:

4
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 712.11, Florida Statutes, is created to
8 read:

9 712.11 Covenant revitalization.--A homeowners' association
10 not otherwise subject to chapter 720 may use the procedures set
11 forth in ss. 720.403-720.407 to revive covenants that have
12 lapsed under the terms of this chapter.

13 Section 2. Effective October 1, 2006, subsection (11) of
14 section 718.110, Florida Statutes, is amended to read:

15 718.110 Amendment of declaration; correction of error or
16 omission in declaration by circuit court.--

17 (11) The Legislature finds that the procurement of
18 mortgagee consent to amendments that do not affect the rights or
19 interests of mortgagees is an unreasonable and substantial
20 logistical and financial burden on the unit owners and that
21 there is a compelling state interest in enabling the members in

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22 a condominium association to approve amendments to the
23 condominium documents through legal means. Accordingly, and
24 notwithstanding any provision to the contrary contained in this
25 section:

26 (a) As to any mortgage recorded on or after October 1,
27 2006, any provision in the declaration, articles of
28 incorporation or bylaws that requires ~~any declaration recorded~~
29 ~~after April 1, 1992, may not require~~ the consent or joinder of
30 some or all mortgagees of units or any other portion of the
31 condominium property to or in amendments to the declaration,
32 articles of incorporation or bylaws, or for any other matter
33 shall be enforceable only as ~~unless the requirement is limited~~
34 to the following matters ~~amendments materially affecting the~~
35 ~~rights or interests of the mortgagees, or as otherwise required~~
36 ~~by the Federal National Mortgage Association or the Federal Home~~
37 ~~Loan Mortgage Corporation, and unless the requirement provides~~
38 ~~that such consent may not be unreasonably withheld. It shall be~~
39 ~~presumed that, except as to:~~

40 1. Those matters described in subsections (4) and (8), and
41 2. Amendments to the declaration, articles of incorporation
42 or by-laws which adversely affect the priority of the
43 mortgagee's lien or the mortgagee's rights to foreclose its lien
44 or otherwise materially affect the rights and interests of the
45 mortgagees.

46 (b) As to mortgages recorded before the effective date of
47 this amendment, any existing provisions in the declaration,
48 articles of incorporation or by-laws requiring mortgagee consent
49 shall be enforceable.

50 (c) In securing consent or joinder the association shall be
51 entitled to rely upon the public records to identify the holders
52 of outstanding mortgages. The association may use the address

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53 provided in the original recorded mortgage document, unless
54 there is a different address for the holder of the mortgage in a
55 recorded assignment or modification of the mortgage, which
56 recorded assignment or modification must reference the official
57 records book and page of which the original mortgage was
58 recorded. Once the association has identified the recorded
59 mortgages of record, the association shall request of each unit
60 owner whose unit is encumbered by a mortgage of record any
61 information the owner has in his or her possession regarding the
62 name and address of the person to whom mortgage payments are
63 currently being made. Notice shall be sent to such person if it
64 is in addition to the name and address of the mortgagee or
65 assignee of the mortgage as shown by the public record. The
66 association shall be deemed to have complied with this
67 requirement by making the written request of the unit owners
68 required hereunder. Any notices required to be sent to the
69 mortgagees hereunder shall be sent to all available addresses
70 provided to the association.

71 (d) Any notice to the mortgagees required hereunder may be
72 sent by a method that establishes proof of delivery, and any
73 mortgagee who fails to respond within sixty (60) days of the
74 date of mailing shall be deemed to have consented to the
75 amendment.

76 (e) For those amendments requiring mortgagee consent on or
77 after October 1, 2006, ~~do not materially affect the rights or~~
78 ~~interests of mortgagees.~~ in the event mortgagee consent is
79 provided other than by properly recorded joinder, such consent
80 shall be evidenced by affidavit of the association recorded in
81 the public records of the county where the declaration is
82 recorded. Any amendment adopted without the required consent of
83 a mortgagee shall be voidable only by a mortgagee who was

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84 entitled to notice and an opportunity to consent. An action to
85 void an amendment shall be subject to the statute of limitations
86 beginning five years from the date of discovery as to the
87 amendments described in subparagraph (a)1. hereinabove and five
88 (5) years from the date of recordation of the certificate of
89 amendment for all other amendments. This provision shall apply
90 to all mortgages, regardless of the date of recordation of the
91 mortgage.

92 Section 3. Paragraph (1) of subsection (2) of section
93 718.112, Florida Statutes, is amended to read:

94 718.112 Bylaws.--

95 (2) REQUIRED PROVISIONS.--The bylaws shall provide for the
96 following and, if they do not do so, shall be deemed to include
97 the following:

98 (1) Certificate of compliance.--There shall be a provision
99 that a certificate of compliance from a licensed electrical
100 contractor or electrician may be accepted by the association's
101 board as evidence of compliance of the condominium units with
102 the applicable fire and life safety code. Notwithstanding the
103 provisions of chapter 633 or of any other code, statute,
104 ordinance, administrative rule, or regulation, or any
105 interpretation of the foregoing, an association, condominium, or
106 unit owner is not obligated to retrofit the common elements or
107 units of a residential condominium with a fire sprinkler system
108 or other engineered lifesafety system in a building that has
109 been certified for occupancy by the applicable governmental
110 entity, if the unit owners have voted to forego such
111 retrofitting and engineered lifesafety system by the affirmative
112 vote of two-thirds of all voting interests in the affected
113 condominium. However, a condominium association may not vote to
114 forego the retrofitting with a fire sprinkler system of common

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115 areas in a high-rise building. For purposes of this subsection,
116 the term "high-rise building" means a building that is greater
117 than 75 feet in height where the building height is measured
118 from the lowest level of fire department access to the floor of
119 the highest occupiable story. For purposes of this subsection,
120 the term "common areas" means any enclosed hallway, corridor,
121 lobby, stairwell, or entryway. In no event shall the local
122 authority having jurisdiction require completion of retrofitting
123 of common areas with a sprinkler system before the end of 2025
124 2014.

125 1. A vote to forego retrofitting may be obtained by
126 limited proxy or by a ballot personally cast at a duly called
127 membership meeting, or by execution of a written consent by the
128 member, and shall be effective upon the recording of a
129 certificate attesting to such vote in the public records of the
130 county where the condominium is located. The association shall
131 mail, hand deliver, or electronically transmit to each unit
132 owner written notice at least 14 days prior to such membership
133 meeting in which the vote to forego retrofitting of the required
134 fire sprinkler system is to take place. Within 30 days after the
135 association's opt-out vote, notice of the results of the opt-out
136 vote shall be mailed, hand delivered, or electronically
137 transmitted to all unit owners. Evidence of compliance with this
138 30-day notice shall be made by an affidavit executed by the
139 person providing the notice and filed among the official records
140 of the association. After such notice is provided to each owner,
141 a copy of such notice shall be provided by the current owner to
142 a new owner prior to closing and shall be provided by a unit
143 owner to a renter prior to signing a lease.

144 2. As part of the information collected annually from
145 condominiums, the division shall require condominium

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146 associations to report the membership vote and recording of a
147 certificate under this subsection and, if retrofitting has been
148 undertaken, the per-unit cost of such work. The division shall
149 annually report to the Division of State Fire Marshal of the
150 Department of Financial Services the number of condominiums that
151 have elected to forego retrofitting.

152 Section 4. Section 718.114, Florida Statutes, is amended
153 to read:

154 718.114 Association powers.--An association has the power
155 to enter into agreements, to acquire leaseholds, memberships,
156 and other possessory or use interests in lands or facilities
157 such as country clubs, golf courses, marinas, and other
158 recreational facilities. It has this power whether or not the
159 lands or facilities are contiguous to the lands of the
160 condominium, if they are intended to provide enjoyment,
161 recreation, or other use or benefit to the unit owners. All of
162 these leaseholds, memberships, and other possessory or use
163 interests existing or created at the time of recording the
164 declaration must be stated and fully described in the
165 declaration. Subsequent to the recording of the declaration,
166 agreements acquiring these leaseholds, memberships, or other
167 possessory or use interests not entered into within 12 months
168 following the recording of the declaration shall be considered a
169 material alteration or substantial addition to the real property
170 that is association property, and the association may not
171 acquire or enter into agreements acquiring these leaseholds,
172 memberships, or other possessory or use interests except as
173 authorized by the declaration as provided in s. 718.113. The
174 declaration may provide that the rental, membership fees,
175 operations, replacements, and other expenses are common expenses
176 and may impose covenants and restrictions concerning their use

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and may contain other provisions not inconsistent with this chapter. A condominium association may conduct bingo games as provided in s. 849.0931.

Section 5. Subsections (1) and (2) of section 718.404, Florida Statutes, are amended to read:

718.404 Mixed-use condominiums.--When a condominium consists of both residential and commercial units, the following provisions shall apply:

(1) The condominium documents shall not provide that the owner of any commercial unit shall have the authority to veto amendments to the declaration, articles of incorporation, bylaws, or rules or regulations of the association. This subsection shall apply retroactively as a remedial measure.

(2) Subject to s. 718.301, where the number of residential units in the condominium equals or exceeds 50 percent of the total units operated by the association, owners of the residential units shall be entitled to vote for a majority of the seats on the board of administration. This subsection shall apply retroactively as a remedial measure.

Section 6. Subsections (4) and (5) of section 720.302, Florida Statutes, are amended to read:

720.302 Purposes, scope, and application.--

(4) This chapter does not apply to any association that is subject to regulation under chapter 718, chapter 719, or chapter 721, or to any nonmandatory association formed under chapter 723, except to the extent that a provision of chapter 718, chapter 719, or chapter 721 is expressly incorporated into this chapter for the purpose of regulating homeowners' associations.

(5) Unless expressly stated to the contrary, corporations ~~not for profit~~ that operate residential homeowners' associations in this state shall be governed by and subject to chapter 607,

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208 if the association was incorporated thereunder, or to chapter
209 617, if the association was incorporated thereunder, and this
210 chapter. This subsection is intended to clarify existing law.

211 Section 7. Paragraph (a) of subsection (2), and
212 subsections (5), (6), and (7) of section 720.303, Florida
213 Statutes, as amended by section 18 of chapter 2004-345 and
214 section 135 of chapter 2005-2, Laws of Florida, are amended, and
215 paragraph (d) is added to subsection (5) of that section, to
216 read:

217 720.303 Association powers and duties; meetings of board;
218 official records; budgets; financial reporting; association
219 funds; recalls.--

220 (2) BOARD MEETINGS.--

221 (a) A meeting of the board of directors of an association
222 occurs whenever a quorum of the board gathers to conduct
223 association business. All meetings of the board must be open to
224 all members except for meetings between the board and its
225 attorney with respect to proposed or pending litigation where
226 the contents of the discussion would otherwise be governed by
227 the attorney-client privilege. The provisions of this subsection
228 shall also apply to the meetings of any committee or other
229 similar body when a final decision will be made regarding the
230 expenditure of association funds and to meetings of any body
231 vested with the power to approve or disapprove architectural
232 decisions with respect to a specific parcel of residential
233 property owned by a member of the community.

234 (5) INSPECTION AND COPYING OF RECORDS.--The official
235 records shall be maintained within the state and must be open to
236 inspection and available for photocopying by members or their
237 authorized agents at reasonable times and places within 10
238 business days after receipt of a written request for access.

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239 This subsection may be complied with by having a copy of the
240 official records available for inspection or copying in the
241 community. If the association has a photocopy machine available
242 where the records are maintained, it must provide parcel owners
243 with copies on request during the inspection if the entire
244 request is limited to no more than 25 pages.

245 (d) The association or its authorized agent is not
246 required to provide a prospective purchaser or lienholder with
247 information about the residential subdivision or the association
248 other than information or documents required by this chapter to
249 be made available or disclosed. The association or its
250 authorized agent may charge a reasonable fee to the prospective
251 purchaser or lienholder or the current parcel owner or member
252 for providing good faith responses to requests for information
253 by or on behalf of a prospective purchaser or lienholder, other
254 than that required by law, if the fee does not exceed \$50 plus
255 the reasonable cost of photocopying and any attorney's fees
256 incurred by the association in connection with the response.

257 (6) BUDGETS.--

258 (a) The association shall prepare an annual budget that
259 sets out the annual operating expenses. The budget must reflect
260 the estimated revenues and expenses for that year and the
261 estimated surplus or deficit as of the end of the current year.
262 The budget must set out separately all fees or charges paid for
263 by the association for recreational amenities, whether owned by
264 the association, the developer, or another person. The
265 association shall provide each member with a copy of the annual
266 budget or a written notice that a copy of the budget is
267 available upon request at no charge to the member. The copy must
268 be provided to the member within the time limits set forth in
269 subsection (5).

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270 (b) In addition to annual operating expenses, the budget
271 may include reserve accounts for capital expenditures and
272 deferred maintenance for which the association is responsible to
273 the extent that the governing documents do not limit increases
274 in assessments, including reserves. If the budget of the
275 association includes reserve accounts, such reserves shall be
276 determined, maintained, and waived in the manner provided in
277 this subsection. Once an association provides for reserve
278 accounts in the budget, the association shall thereafter
279 determine, maintain, and waive reserves in compliance with the
280 provisions of this subsection.

281 (c) If the budget of the association does not provide for
282 reserve accounts governed by this subsection and the association
283 is responsible for the repair and maintenance of capital
284 improvements that may result in a special assessment if reserves
285 are not provided, each financial report for the preceding fiscal
286 year required by subsection (7) shall contain the following
287 statement in conspicuous type: THE BUDGET OF THE ASSOCIATION
288 DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR CAPITAL EXPENDITURES
289 AND DEFERRED MAINTENANCE THAT MAY RESULT IN SPECIAL ASSESSMENTS.
290 OWNERS MAY ELECT TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO THE
291 PROVISIONS OF SECTION 720.303(6), FLORIDA STATUTES, UPON THE
292 APPROVAL OF NOT LESS THAN A MAJORITY OF THE TOTAL VOTING
293 INTERESTS OF THE ASSOCIATION.

294 (d) An association shall be deemed to have provided for
295 reserve accounts when reserve accounts have been initially
296 established by the developer or when the membership of the
297 association affirmatively elects to provide for reserves. If
298 reserve accounts are not initially provided for by the
299 developer, the membership of the association may elect to do so
300 upon the affirmative approval of not less than a majority of the

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301 total voting interests of the association. Such approval may be
302 attained by vote of the members at a duly called meeting of the
303 membership or upon a written consent executed by not less than a
304 majority of the total voting interests in the community. The
305 approval action of the membership shall state that reserve
306 accounts shall be provided for in the budget and the approval
307 action of the membership shall designate the components for
308 which the reserve accounts are to be established. Upon approval
309 by the membership, the board of directors shall provide for the
310 required reserve accounts for inclusion in the budget in the
311 next fiscal year following the approval and in each year
312 thereafter. Once established as provided in this subsection, the
313 reserve accounts shall be funded or maintained or shall have
314 their funding waived in the manner provided in paragraph (f).

315 (e) The amount to be reserved in any account established
316 shall be computed by means of a formula that is based upon
317 estimated remaining useful life and estimated replacement cost
318 or deferred maintenance expense of each reserve item. The
319 association may adjust replacement reserve assessments annually
320 to take into account any changes in estimates of cost or useful
321 life of a reserve item.

322 (f) Once a reserve account or reserve accounts are
323 established, the membership of the association upon a majority
324 vote at a meeting at which a quorum is present may provide for
325 no reserves or less reserves than required by this section. If a
326 meeting of the unit owners has been called to determine whether
327 to waive or reduce the funding of reserves and no such result is
328 achieved or a quorum is not attained, the reserves as included
329 in the budget shall go into effect. After the turnover, the
330 developer may vote its voting interest to waive or reduce the
331 funding of reserves. Any vote taken pursuant to this subsection

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332 to waive or reduce reserves shall be applicable only to one
333 budget year.

334 (g) Funding formulas for reserves authorized by this
335 section shall be based on either a separate analysis of each of
336 the required assets or a pooled analysis of two or more of the
337 required assets.

338 1. If the association maintains separate reserve accounts
339 for each of the required assets, the amount of the contribution
340 to each reserve account shall be the sum of the following two
341 calculations:

342 a. The total amount necessary, if any, to bring a negative
343 component balance to zero; and

344 b. The total estimated deferred maintenance expense or
345 estimated replacement cost of the reserve component less the
346 estimated balance of the reserve component as of the beginning
347 of the period for which the budget will be in effect. The
348 remainder, if greater than zero, shall be divided by the
349 estimated remaining useful life of the component. The formula
350 may be adjusted each year for changes in estimates and deferred
351 maintenance performed during the year and may include factors
352 such as inflation and earnings on invested funds.

353 2. If the association maintains a pooled account of two or
354 more of the required reserve assets, the amount of the
355 contribution to the pooled reserve account as disclosed on the
356 proposed budget shall not be less than that required to ensure
357 that the balance on hand at the beginning of the period for
358 which the budget will go into effect plus the projected annual
359 cash inflows over the remaining estimated useful life of all of
360 the assets that make up the reserve pool are equal to or greater
361 than the projected annual cash outflows over the remaining
362 estimated useful lives of all of the assets that make up the

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363 reserve pool, based on the current reserve analysis. The
364 projected annual cash inflows may include estimated earnings
365 from investment of principal. The reserve funding formula shall
366 not include any type of balloon payments.

367 (h) Reserve funds and any interest accruing thereon shall
368 remain in the reserve account or accounts and shall be used only
369 for authorized reserve expenditures unless their use for other
370 purposes is approved in advance by a majority vote at a meeting
371 at which a quorum is present. Prior to turnover of control of an
372 association by a developer to parcel owners, the developer-
373 controlled association shall not vote to use reserves for
374 purposes other than that for which they were intended without
375 the approval of a majority of all nondeveloper voting interests
376 voting in person or by limited proxy at a duly called meeting of
377 the association.

378 (7) FINANCIAL REPORTING.--Within 90 days after the end of
379 the fiscal year, or annually on the date provided in the bylaws,
380 the association shall prepare and complete, or contract for the
381 preparation and completion of, a ~~an annual~~ financial report for
382 the preceding fiscal year. Within 21 ~~60~~ days after the final
383 financial report is completed by the association or received
384 from the third party, but not later than 120 days after the end
385 of the fiscal year or other date as provided in the bylaws,
386 ~~close of the fiscal year.~~ the association shall, within the time
387 limits set forth in subsection (5), provide each member with a
388 copy of the annual financial report or a written notice that a
389 copy of the financial report is available upon request at no
390 charge to the member. Financial reports shall be prepared as
391 follows:

392 (a) An association that meets the criteria of this
393 paragraph shall prepare or cause to be prepared a complete set

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of financial statements in accordance with generally accepted accounting principles as adopted by the Board of Accountancy. The financial statements shall be based upon the association's total annual revenues, as follows:

1. An association with total annual revenues of \$100,000 or more, but less than \$200,000, shall prepare compiled financial statements.

2. An association with total annual revenues of at least \$200,000, but less than \$400,000, shall prepare reviewed financial statements.

3. An association with total annual revenues of \$400,000 or more shall prepare audited financial statements.

(b)1. An association with total annual revenues of less than \$100,000 shall prepare a report of cash receipts and expenditures.

2. An association in a community of fewer than 50 parcels, regardless of the association's annual revenues, may prepare a report of cash receipts and expenditures in lieu of financial statements required by paragraph (a) unless the governing documents provide otherwise.

3. A report of cash receipts and disbursement must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional, and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves if maintained by the association.

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424 (c) If 20 percent of the parcel owners petition the board
425 for a level of financial reporting higher than that required by
426 this section, the association shall duly notice and hold a
427 meeting of members within 30 days of receipt of the petition for
428 the purpose of voting on raising the level of reporting for that
429 fiscal year. Upon approval of a majority of the total voting
430 interests of the parcel owners, the association shall prepare or
431 cause to be prepared, shall amend the budget or adopt a special
432 assessment to pay for the financial report regardless of any
433 provision to the contrary in the governing documents, and shall
434 provide within 90 days of the meeting or the end of the fiscal
435 year, whichever occurs later:

436 1. Compiled, reviewed, or audited financial statements, if
437 the association is otherwise required to prepare a report of
438 cash receipts and expenditures;

439 2. Reviewed or audited financial statements, if the
440 association is otherwise required to prepare compiled financial
441 statements; or

442 3. Audited financial statements if the association is
443 otherwise required to prepare reviewed financial statements.

444 (d) If approved by a majority of the voting interests
445 present at a properly called meeting of the association, an
446 association may prepare or cause to be prepared:

447 1. A report of cash receipts and expenditures in lieu of a
448 compiled, reviewed, or audited financial statement;

449 2. A report of cash receipts and expenditures or a
450 compiled financial statement in lieu of a reviewed or audited
451 financial statement; or

452 3. A report of cash receipts and expenditures, a compiled
453 financial statement, or a reviewed financial statement in lieu
454 of an audited financial statement.

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Section 8. Subsection (2) of section 720.303, Florida Statutes, as amended by section 2 of chapter 2004-345 and section 15 of chapter 2004-353, Laws of Florida, is repealed.

Section 9. Section 720.3035, Florida Statutes, is created to read:

720.3035 Architectural control covenants; parcel owner improvements; rights and privileges.--

(1) The authority of an association or any architectural, construction improvement, or other such similar committee of an association to review and approve plans and specifications for the location, size, type, or appearance of any structure or other improvement on a parcel, or to enforce standards for the external appearance of any structure or improvement located on a parcel, shall only be permitted to the extent that the authority is specifically stated or reasonably inferred as to such location, size, type, or appearance in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants.

(2) If the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants provides options for the use of material, the size of the structure or improvement, the design of the structure or improvement, or the location of the structure or improvement on the parcel, neither the association nor any architectural, construction improvement, or other such similar committee of the association shall restrict the right of a parcel owner to select from the options provided in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants.

(3) Unless otherwise specifically stated in the declaration of covenants or other published guidelines and

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standards authorized by the declaration of covenants, each parcel shall be deemed to have only one front for purposes of determining the required front setback even if the parcel is bounded by a roadway or other easement on more than one side. When the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants does not provide for specific setback limitations, the applicable county or municipal setback limitations shall apply, and neither the association nor any architectural, construction improvement, or other such similar committee of the association shall enforce or attempt to enforce any setback limitation that is inconsistent with the applicable county or municipal standard or standards.

(4) Each parcel owner shall be entitled to the rights and privileges set forth in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants concerning the use of the parcel, and the construction of permitted structures and improvements on the parcel and such rights and privileges shall not be unreasonably infringed upon or impaired by the association or any architectural, construction improvement, or other such similar committee of the association. If the association or any architectural, construction improvement, or other such similar committee of the association should knowingly and willfully infringe upon or impair the rights and privileges set forth in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants, the adversely affected parcel owner shall be entitled to recover damages caused by such infringement or impairment, including any costs and reasonable attorney's fees incurred in preserving or restoring the rights and privileges of the parcel owner set

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517 forth in the declaration of covenants or other published
518 guidelines and standards authorized by the declaration of
519 covenants.

520 (5) Neither the association nor any architectural,
521 construction improvement, or other such similar committee of the
522 association shall enforce any policy or restriction that is
523 inconsistent with the rights and privileges of a parcel owner
524 set forth in the declaration of covenants or other published
525 guidelines and standards authorized by the declaration of
526 covenants, whether uniformly applied or not. Neither the
527 association nor any architectural, construction improvement, or
528 other such similar committee of the association may rely upon a
529 policy or restriction that is inconsistent with the declaration
530 of covenants or other published guidelines and standards
531 authorized by the declaration of covenants, whether uniformly
532 applied or not, in defense of any action taken in the name of or
533 on behalf of the association against a parcel owner.

534 Section 10. Subsection (1) of section 720.305, Florida
535 Statutes, is amended to read:

536 720.305 Obligations of members; remedies at law or in
537 equity; levy of fines and suspension of use rights; failure to
538 fill sufficient number of vacancies on board of directors to
539 constitute a quorum; appointment of receiver upon petition of
540 any member.--

541 (1) Each member and the member's tenants, guests, and
542 invitees, and each association, are governed by, and must comply
543 with, this chapter, the governing documents of the community,
544 and the rules of the association. Actions at law or in equity,
545 or both, to redress alleged failure or refusal to comply with
546 these provisions may be brought by the association or by any
547 member against:

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(a) The association;

(b) A member;

(c) Any director or officer of an association who willfully and knowingly fails to comply with these provisions; and

(d) Any tenants, guests, or invitees occupying a parcel or using the common areas.

The prevailing party in any such litigation is entitled to recover reasonable attorney's fees and costs. A member prevailing in an action between the association and the member under this section, in addition to recovering his or her reasonable attorney's fees, may recover additional amounts as determined by the court to be necessary to reimburse the member for his or her share of assessments levied by the association to fund its expenses of the litigation. This relief does not exclude other remedies provided by law. This section does not deprive any person of any other available right or remedy.

Section 11. Paragraph (c) of subsection (1) of section 720.306, Florida Statutes, is amended to read:

720.306 Meetings of members; voting and election procedures; amendments.--

(1) QUORUM; AMENDMENTS.--

(c) Unless otherwise provided in the governing documents as originally recorded or permitted by this chapter or chapter 617, an amendment may not materially and adversely alter the proportionate voting interest appurtenant to a parcel or increase the proportion or percentage by which a parcel shares in the common expenses of the association unless the record parcel owner and all record owners of liens on the parcels join in the execution of the amendment. For purposes of this section,

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a change in quorum requirements is not an alteration of voting interests. The merger or consolidation of one or more associations under a plan of merger or consolidation under chapter 607 or chapter 617 shall not be considered a material or adverse alteration of the proportionate voting interest appurtenant to a parcel.

Section 12. Paragraph (t) is added to subsection (3) of section 720.307, Florida Statutes, to read:

720.307 Transition of association control in a community.--With respect to homeowners' associations:

(3) At the time the members are entitled to elect at least a majority of the board of directors of the homeowners' association, the developer shall, at the developer's expense, within no more than 90 days deliver the following documents to the board:

(t) The financial records, including financial statements of the association, and source documents from the incorporation of the association through the date of turnover. The records shall be audited by an independent certified public accountant for the period from the incorporation of the association or from the period covered by the last audit, if an audit has been performed for each fiscal year since incorporation. All financial statements shall be prepared in accordance with generally accepted accounting principles and shall be audited in accordance with generally accepted auditing standards, as prescribed by the Board of Accountancy, pursuant to chapter 473. The certified public accountant performing the audit shall examine to the extent necessary supporting documents and records, including the cash disbursements and related paid invoices to determine whether expenditures were for association purposes and the billings, cash receipts, and related records of

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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the association to determine whether the developer was charged and paid the proper amounts of assessments. This paragraph applies to associations with a date of incorporation after December 31, 2006.

Section 13. Section 720.308, Florida Statutes, is amended to read:

720.308 Assessments and charges.--

(1) ASSESSMENTS.--For any community created after October 1, 1995, the governing documents must describe the manner in which expenses are shared and specify the member's proportional share thereof. Assessments levied pursuant to the annual budget or special assessment must be in the member's proportional share of expenses as described in the governing document, which share may be different among classes of parcels based upon the state of development thereof, levels of services received by the applicable members, or other relevant factors. While the developer is in control of the homeowners' association, it may be excused from payment of its share of the operating expenses and assessments related to its parcels for any period of time for which the developer has, in the declaration, obligated itself to pay any operating expenses incurred that exceed the assessments receivable from other members and other income of the association. This section does not apply to an association, no matter when created, if the association is created in a community that is included in an effective development-of-regional-impact development order as of the effective date of this act, together with any approved modifications thereto.

(2) GUARANTEE OF COMMON EXPENSES.--

(a) Establishment of a guarantee.--If a guarantee of the assessments of parcel owners is not included in the purchase contracts or declaration, any agreement establishing a guarantee

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641 shall be effective only upon the approval of a majority of the
642 voting interests of the members other than the developer.
643 Approval shall be expressed at a meeting of the members voting
644 in person or by limited proxy or by agreement in writing without
645 a meeting if provided in the bylaws. Such guarantee shall meet
646 the requirements of this section.

647 (b) Guarantee period.--The period of time for the
648 guarantee shall be indicated by a specific beginning and ending
649 date or event.

650 1. The ending date or event shall be the same for all of
651 the members of a homeowners' association, including members in
652 different phases of the development.

653 2. The guarantee may provide for different intervals of
654 time during a guarantee period with different dollar amounts for
655 each such interval.

656 3. The guarantee may provide that after the initial stated
657 period the developer has an option to extend the guarantee for
658 one or more additional stated periods. The extension of a
659 guarantee is limited to extending the ending date or event;
660 therefore, the developer does not have the option of changing
661 the level of assessments guaranteed.

662 (3) MAXIMUM LEVEL OF ASSESSMENTS.--The stated dollar
663 amount of the guarantee shall be an exact dollar amount for each
664 parcel identified in the declaration. Regardless of the stated
665 dollar amount of the guarantee, assessments charged to a member
666 shall not exceed the maximum obligation of the member based on
667 the total amount of the adopted budget and the member's
668 proportionate ownership share of the common elements.

669 (4) CASH FUNDING REQUIREMENTS DURING THE GUARANTEE.--The
670 cash payments required from the guarantor during the guarantee
671 period shall be determined as follows:

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672 (a) If at any time during the guarantee period the funds
673 collected from member assessments at the guaranteed level and
674 other revenues collected by the association are not sufficient
675 to provide payment, on a timely basis, of all assessments,
676 including the full funding of the reserves unless properly
677 waived, the guarantor shall advance sufficient cash to the
678 association at the time such payments are due.

679 (b) Expenses incurred in the production of nonassessment
680 revenues, not in excess of the nonassessment revenues, shall not
681 be included in the assessments. If the expenses attributable to
682 nonassessment revenues exceed nonassessment revenues, only the
683 excess expenses must be funded by the guarantor. Interest earned
684 on the investment of association funds may be used to pay the
685 income tax expense incurred as a result of the investment; such
686 expense shall not be charged to the guarantor; and the net
687 investment income shall be retained by the association. Each
688 such nonassessment-revenue-generating activity shall be
689 considered separately. Any portion of the parcel assessment that
690 is budgeted for designated capital contributions of the
691 association shall not be used to pay operating expenses.

692 (5) CALCULATION OF GUARANTOR'S FINAL OBLIGATION.--The
693 guarantor's total financial obligation to the association at the
694 end of the guarantee period shall be determined on the accrual
695 basis using the following formula: the guarantor shall pay any
696 deficits that exceed the guaranteed amount, less the total
697 regular periodic assessments earned by the association from the
698 members other than the guarantor during the guarantee period,
699 regardless of whether the actual level charged was less than the
700 maximum guaranteed amount.

701 (6) EXPENSES.--Expenses incurred in the production of
702 nonassessment revenues, not in excess of the nonassessment

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703 revenues, shall not be included in the operating expenses. If
704 the expenses attributable to nonassessment revenues exceed
705 nonassessment revenues, only the excess expenses must be funded
706 by the guarantor. Interest earned on the investment of
707 association funds may be used to pay the income tax expense
708 incurred as a result of the investment; such expense shall not
709 be charged to the guarantor; and the net investment income shall
710 be retained by the association. Each such nonassessment-revenue-
711 generating activity shall be considered separately. Any portion
712 of the parcel assessment that is budgeted for designated capital
713 contributions of the association shall not be used to pay
714 operating expenses.

715 Section 14. Section 720.311, Florida Statutes, is amended
716 to read:

717 720.311 Dispute resolution.--

718 (1) The Legislature finds that alternative dispute
719 resolution has made progress in reducing court dockets and
720 trials and in offering a more efficient, cost-effective option
721 to litigation. The filing of any petition for ~~mediation or~~
722 arbitration or the serving of an offer for presuit mediation as
723 provided for in this section shall toll the applicable statute
724 of limitations. Any recall dispute filed with the department
725 pursuant to s. 720.303(10) shall be conducted by the department
726 in accordance with the provisions of ss. 718.112(2)(j) and
727 718.1255 and the rules adopted by the division. In addition, the
728 department shall conduct mandatory binding arbitration of
729 election disputes between a member and an association pursuant
730 to s. 718.1255 and rules adopted by the division. Neither
731 election disputes nor recall disputes are eligible for presuit
732 mediation; these disputes shall be arbitrated by the department.
733 At the conclusion of the proceeding, the department shall charge

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the parties a fee in an amount adequate to cover all costs and expenses incurred by the department in conducting the proceeding. Initially, the petitioner shall remit a filing fee of at least \$200 to the department. The fees paid to the department shall become a recoverable cost in the arbitration proceeding, and the prevailing party in an arbitration proceeding shall recover its reasonable costs and attorney's fees in an amount found reasonable by the arbitrator. The department shall adopt rules to effectuate the purposes of this section.

(2) (a) Disputes between an association and a parcel owner regarding use of or changes to the parcel or the common areas and other covenant enforcement disputes, disputes regarding amendments to the association documents, disputes regarding meetings of the board and committees appointed by the board, membership meetings not including election meetings, and access to the official records of the association shall be the subject of an offer filed with the department for presuit mandatory mediation served by an aggrieved party before the dispute is filed in court. Presuit mediation proceedings must be conducted in accordance with the applicable Florida Rules of Civil Procedure, and these proceedings are privileged and confidential to the same extent as court-ordered mediation. Disputes subject to presuit mediation under this section shall not include the collection of any assessment, fine, or other financial obligation, including attorney's fees and costs, claimed to be due or any action to enforce a prior mediation settlement agreement between the parties. Also, in any dispute subject to presuit mediation under this section where emergency relief is required, a motion for temporary injunctive relief may be filed with the court without first complying with the presuit

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mediation requirements of this section. After any issues regarding emergency or temporary relief are resolved, the court may either refer the parties to a mediation program administered by the courts or require mediation under this section. An arbitrator or judge may not consider any information or evidence arising from the presuit mediation proceeding except in a proceeding to impose sanctions for failure to attend a presuit mediation session or with the parties' agreement in a proceeding seeking to enforce the agreement. Persons who are not parties to the dispute may not attend the presuit mediation conference without the consent of all parties, except for counsel for the parties and a corporate representative designated by the association. When mediation is attended by a quorum of the board, such mediation is not a board meeting for purposes of notice and participation set forth in s. 720.303. An aggrieved party shall serve on the responding party a written offer to participate in presuit mediation in substantially the following form:

STATUTORY OFFER TO PARTICIPATE IN PRESUIT MEDIATION

The alleged aggrieved party, _____, hereby offers to _____, as the responding party, to enter into presuit mediation in connection with the following dispute, which by statute is of a type that is subject to presuit mediation:

(List specific nature of the dispute or disputes to be mediated and the authority supporting a finding of a violation as to each dispute.)

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796 Pursuant to section 720.311, Florida Statutes, this
797 offer to resolve the dispute through presuit mediation
798 is required before a lawsuit can be filed concerning
799 the dispute. Pursuant to the statute, the aggrieved
800 party is hereby offering to engage in presuit
801 mediation with a neutral third-party mediator in order
802 to attempt to resolve this dispute without court
803 action, and the aggrieved party demands that you
804 likewise agree to this process. If you fail to agree
805 to presuit mediation, or if you agree and later fail
806 to follow through with your agreement to mediate, suit
807 may be brought against you without further warning.

808
809 The process of mediation involves a supervised
810 negotiation process in which a trained, neutral third-
811 party mediator meets with both parties and assists
812 them in exploring possible opportunities for resolving
813 part or all of the dispute. The mediation process is a
814 voluntary one. By agreeing to participate in presuit
815 mediation, you are not bound in any way to change your
816 position or to enter into any type of agreement.
817 Furthermore, the mediator has no authority to make any
818 decisions in this matter or to determine who is right
819 or wrong and merely acts as a facilitator to ensure
820 that each party understands the position of the other
821 party and that all reasonable settlement options are
822 fully explored. All mediation communications are
823 confidential under the Mediation Confidentiality and
824 Privilege Act pursuant to sections 44.401044.406,
825 Florida Statutes, and a mediation participant may not
826 disclose a mediation communication to a person other

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827 than a mediation participant or a participant's
828 counsel.

829
830 If an agreement is reached, it shall be reduced to
831 writing and becomes a binding and enforceable
832 commitment of the parties. A resolution of one or more
833 disputes in this fashion avoids the need to litigate
834 these issues in court. The failure to reach an
835 agreement, or the failure of a party to participate in
836 the process, results in the mediator's declaring an
837 impasse in the mediation, after which the aggrieved
838 party may proceed to court on all outstanding,
839 unsettled disputes.

840
841 The aggrieved party has selected and hereby lists
842 three certified mediators who we believe to be neutral
843 and qualified to mediate the dispute. You have the
844 right to select any one of these mediators. The fact
845 that one party may be familiar with one or more of the
846 listed mediators does not mean that the mediator
847 cannot act as a neutral and impartial facilitator. Any
848 mediator who cannot act in this capacity ethically
849 must decline to accept engagement. The mediators that
850 we suggest, and their current hourly rates, are as
851 follows:

852
853 (List the names, addresses, telephone numbers, and
854 hourly rates of the mediators. Other pertinent
855 information about the background of the mediators may
856 be included as an attachment.)

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858 You may contact the offices of these mediators to
859 confirm that the listed mediators will be neutral and
860 will not show any favoritism toward either party. The
861 names of certified mediators may be found through the
862 office of the clerk of the circuit court for this
863 circuit.

864
865 If you agree to participate in the presuit mediation
866 process, the statute requires that each party is to
867 pay one-half of the costs and fees involved in the
868 presuit mediation process unless otherwise agreed by
869 all parties. An average mediation may require 3 to 4
870 hours of the mediator's time, including some
871 preparation time, and each party would need to pay
872 one-half of the mediator's fees as well as his or her
873 own attorney's fees if he or she chooses to employ an
874 attorney in connection with the mediation. However,
875 use of an attorney is not required and is at the
876 option of each party. The mediator may require the
877 advance payment of some or all of the anticipated
878 fees. The aggrieved party hereby agrees to pay or
879 prepay one-half of the mediator's estimated fees and
880 to forward this amount or such other reasonable
881 advance deposits as the mediator may require for this
882 purpose. Any funds deposited will be returned to you
883 if these are in excess of your share of the fees
884 incurred.

885
886 If you agree to participate in presuit mediation in
887 order to attempt to resolve the dispute and thereby
888 avoid further legal action, please sign below and

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clearly indicate which mediator is acceptable to you.
We will then ask the mediator to schedule a mutually
convenient time and place for the mediation conference
to be held. The mediation conference must be held
within 90 days after the date of this letter unless
extended by mutual written agreement. In the event
that you fail to respond within 20 days after the date
of this letter, or if you fail to agree to at least
one of the mediators that we have suggested and to pay
or prepay to the mediator one-half of the costs
involved, the aggrieved party will be authorized to
proceed with the filing of a lawsuit against you
without further notice and may seek an award of
attorney's fees or costs incurred in attempting to
obtain mediation.

Should you wish, you may also elect to waive presuit
mediation so that this matter may proceed directly to
court.

Therefore, please give this matter your immediate
attention. By law, your response must be mailed by
certified mail, return receipt requested, with an
additional copy being sent by regular first-class mail
to the address shown on this offer.

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918 RESPONDING PARTY: CHOOSE ONLY ONE OF THE TWO OPTIONS
919 BELOW. YOUR SIGNATURE INDICATES YOUR AGREEMENT TO THAT
920 CHOICE.

921
922 AGREEMENT TO MEDIATE

923
924 The undersigned hereby agrees to participate in
925 presuit mediation and agrees to the following mediator
926 or mediators as acceptable to mediate this dispute:

927
928 (List acceptable mediator or mediators.)

929
930 I/we further agree to pay or prepay one-half of the
931 mediator's fees and to forward such advance deposits
932 as the mediator may require for this purpose.

933
934 _____
935 Signature of responding party #1

936
937 _____
938 Signature of responding party #2 (if applicable) (if
939 property is owned by more than one person, all owners
940 must sign)

941
942 WAIVER OF MEDIATION

943
944 The undersigned hereby waives the right to participate
945 in presuit mediation of the dispute listed above and
946 agrees to allow the aggrieved party to proceed in
947 court on such matters.

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Signature of responding party #1

Signature of responding party #2 (if applicable) (if
property is owned by more than one person, all owners
must sign)

(b) Service of the statutory offer to participate in
presuit mediation shall be effected by sending a letter in
substantial conformity with the above form by certified mail,
return receipt requested, with an additional copy being sent by
regular first-class mail, to the address of the responding party
as it last appears on the books and records of the association.
The responding party shall have 20 days from the date of the
mailing of the statutory offer to serve a response to the
aggrieved party in writing. The response shall be served by
certified mail, return receipt requested, with an additional
copy being sent by regular first-class mail, to the address
shown on the statutory offer. In the alternative, the responding
party may waive mediation in writing. Notwithstanding the
foregoing, once the parties have agreed on a mediator, the
mediator may reschedule the mediation for a date and time
mutually convenient to the parties. ~~The department shall conduct
the proceedings through the use of department mediators or refer
the disputes to private mediators who have been duly certified
by the department as provided in paragraph (c).~~ The parties
shall share the costs of presuit mediation equally, including
the fee charged by the mediator, if any, unless the parties
agree otherwise, and the mediator may require advance payment of
its reasonable fees and costs. The failure of any party to

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980 respond to a demand or response, to agree upon a mediator, to
981 make payment of fees and costs within the time established by
982 the mediator, or to appear for a scheduled mediation session
983 shall operate as an impasse in the presuit mediation by such
984 party, entitling the other party to proceed in court and to seek
985 an award of the costs and fees associated with the mediation.
986 Additionally, if any presuit mediation session cannot be
987 scheduled and conducted within 90 days after the offer to
988 participate in mediation was filed, an impasse shall be deemed
989 to have occurred unless both parties agree to extend this
990 deadline. ~~If a department mediator is used, the department may~~
991 ~~charge such fee as is necessary to pay expenses of the~~
992 ~~mediation, including, but not limited to, the salary and~~
993 ~~benefits of the mediator and any travel expenses incurred. The~~
994 ~~petitioner shall initially file with the department upon filing~~
995 ~~the disputes, a filing fee of \$200, which shall be used to~~
996 ~~defray the costs of the mediation. At the conclusion of the~~
997 ~~mediation, the department shall charge to the parties, to be~~
998 ~~shared equally unless otherwise agreed by the parties, such~~
999 ~~further fees as are necessary to fully reimburse the department~~
1000 ~~for all expenses incurred in the mediation.~~

1001 (c) ~~(b)~~ If presuit mediation as described in paragraph (a)
1002 is not successful in resolving all issues between the parties,
1003 the parties may file the unresolved dispute in a court of
1004 competent jurisdiction or elect to enter into binding or
1005 nonbinding arbitration pursuant to the procedures set forth in
1006 s. 718.1255 and rules adopted by the division, with the
1007 arbitration proceeding to be conducted by a department
1008 arbitrator or by a private arbitrator certified by the
1009 department. If all parties do not agree to arbitration
1010 proceedings following an unsuccessful mediation, any party may

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1011 file the dispute in court. A final order resulting from
1012 nonbinding arbitration is final and enforceable in the courts if
1013 a complaint for trial de novo is not filed in a court of
1014 competent jurisdiction within 30 days after entry of the order.
1015 As to any issue or dispute that is not resolved at presuit
1016 mediation, and as to any issue that is settled at presuit
1017 mediation but is thereafter subject to an action seeking
1018 enforcement of the mediation settlement, the prevailing party in
1019 any subsequent arbitration or litigation proceeding shall be
1020 entitled to seek recovery of all costs and attorney's fees
1021 incurred in the presuit mediation process.

1022 ~~(d)(c) The department shall develop a certification and~~
1023 ~~training program for private mediators and private arbitrators~~
1024 ~~which shall emphasize experience and expertise in the area of~~
1025 ~~the operation of community associations. A mediator or~~
1026 ~~arbitrator shall be certified to conduct mediation or~~
1027 ~~arbitration under this section by the department only if he or~~
1028 ~~she has been certified as a circuit court civil mediator or~~
1029 ~~arbitrator, respectively, pursuant to the requirements~~
1030 ~~established attended at least 20 hours of training in mediation~~
1031 ~~or arbitration, as appropriate, and only if the applicant has~~
1032 ~~mediated or arbitrated at least 10 disputes involving community~~
1033 ~~associations within 5 years prior to the date of the~~
1034 ~~application, or has mediated or arbitrated 10 disputes in any~~
1035 ~~area within 5 years prior to the date of application and has~~
1036 ~~completed 20 hours of training in community association~~
1037 ~~disputes. In order to be certified by the department, any~~
1038 ~~mediator must also be certified by the Florida Supreme Court.~~
1039 ~~The department may conduct the training and certification~~
1040 ~~program within the department or may contract with an outside~~
1041 ~~vendor to perform the training or certification. The expenses of~~

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~~operating the training and certification and training program shall be paid by the moneys and filing fees generated by the arbitration of recall and election disputes and by the mediation of those disputes referred to in this subsection and by the training fees.~~

(e)(d) The presuit mediation procedures provided by this subsection may be used by a Florida corporation responsible for the operation of a community in which the voting members are parcel owners or their representatives, in which membership in the corporation is not a mandatory condition of parcel ownership, or which is not authorized to impose an assessment that may become a lien on the parcel.

~~(3) The department shall develop an education program to assist homeowners, associations, board members, and managers in understanding and increasing awareness of the operation of homeowners' associations pursuant to this chapter and in understanding the use of alternative dispute resolution techniques in resolving disputes between parcel owners and associations or between owners. Such education program may include the development of pamphlets and other written instructional guides, the holding of classes and meetings by department employees or outside vendors, as the department determines, and the creation and maintenance of a website containing instructional materials. The expenses of operating the education program shall be initially paid by the moneys and filing fees generated by the arbitration of recall and election disputes and by the mediation of those disputes referred to in this subsection.~~

Section 15. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2006.

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===== T I T L E A M E N D M E N T =====

Remove the entire title and insert:
An act relating to community associations; creating s.
712.11, F.S.; providing for the revival of certain
declarations that have been extinguished; amending s.
718.110, F.S.; revising provisions relating to the
amendment of declarations; providing legislative findings
and a finding of compelling state interest; providing
criteria for consent to an amendment; requiring notice
regarding proposed amendments to mortgagees; providing
criteria for notification; amending s. 718.112, F.S.;
revising implementation date for retrofitting of common
areas with a sprinkler system; amending s. 718.114, F.S.;
providing that certain leaseholds, memberships, or other
possessory or use interests shall be considered a material
alteration or substantial addition to certain real
property; amending s. 718.404, F.S.; providing retroactive
application of provisions relating to mixed-use
condominiums; amending s. 720.302, F.S.; revising
governing provisions relating to corporations that operate
residential homeowners' associations; amending s. 720.303,
F.S.; revising provisions relating to open meetings of the
association; requiring the budget to provide for annual
operating expenses; authorizing the budget to include
reserve accounts for capital expenditures and deferred
maintenance; providing the amount to be reserved;
authorizing the association to adjust replacement reserve
assessments annually; authorizing the developer to vote to
waive the reserves or reduce the funding of reserves for a
certain period; revising provisions relating to financial

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1104 reporting; revising time periods in which the association
1105 must complete its reporting; repealing s. 720.303(2),
1106 F.S., as amended, relating to board meetings, to remove
1107 conflicting versions of that subsection; creating s.
1108 720.3035, F.S.; providing for architectural control
1109 covenants and parcel owner improvements; authorizing the
1110 review and approval of plans and specifications; providing
1111 limitations; providing rights and privileges for parcel
1112 owners as set forth in the declaration of covenants;
1113 amending s. 720.305, F.S.; providing that, where a member
1114 is entitled to collect attorney's fees against the
1115 association, the member may also recover additional
1116 amounts as determined by the court; amending s. 720.306,
1117 F.S.; providing that certain mergers or consolidations of
1118 an association shall not be considered a material or
1119 adverse alteration of the proportionate voting interest
1120 appurtenant to a parcel; revising provisions relating to
1121 items that members and parcel owners may address at
1122 membership meetings; amending s. 720.307, F.S.; requiring
1123 developers to deliver financial records to the board in
1124 any transition of association control to members;
1125 requiring certain information to be included in the
1126 records and for the records to be prepared in a specified
1127 manner; amending s. 720.308, F.S.; providing that a
1128 guarantee of common expenses shall be effective under
1129 certain circumstances; requiring the guarantee to meet
1130 certain requirements; authorizing the guarantee to provide
1131 certain requirements; requiring the stated dollar amount
1132 of the guarantee to be an exact dollar amount for each
1133 parcel identified in the declaration; providing payments
1134 required from the guarantor to be determined in a certain

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

manner; providing a formula to determine the guarantor's total financial obligation to the association; providing that certain expenses incurred in the production of certain revenues shall not be included in the common expenses; amending s. 720.311, F.S.; revising provisions relating to dispute resolution; providing that the filing of any petition for arbitration or the serving of an offer for presuit mediation shall toll the applicable statute of limitations; providing that certain disputes between an association and a parcel owner shall be subject to presuit mediation; revising provisions to conform; providing that temporary injunctive relief may be sought in certain disputes subject to presuit mediation; authorizing the court to refer the parties to mediation under certain circumstances; requiring the aggrieved party to serve on the responding party a written offer to participate in presuit mediation; providing a form for such offer; providing that service of the offer is effected by the sending of such an offer in a certain manner; providing that the prevailing party in any subsequent arbitration or litigation proceedings is entitled to seek recovery of all costs and attorney's fees incurred in the presuit mediation process; requiring the mediator or arbitrator to meet certain certification requirements; removing a requirement relating to development of an education program to increase awareness of the operation of homeowners' associations and the use of alternative dispute resolution techniques; providing effective dates.

COUNCIL/COMMITTEE ACTION

ADOPTED	—	(Y/N)
ADOPTED AS AMENDED	—	(Y/N)
ADOPTED W/O OBJECTION	<u>✓</u>	(Y/N)
FAILED TO ADOPT	—	(Y/N)
WITHDRAWN	—	(Y/N)
OTHER	—	

(A)

Council/Committee hearing bill: Economic Development, Trade &
Banking Committee
Representative(s) Kottkamp offered the following:

**Amendment to Amendment (1) by Representative Kottkamp (with
title amendments)**

Insert between lines 12 and 13:

Section 2. Subsection (5) is added to section 718.106,
Florida Statutes, to read:

718.106 Condominium parcels; appurtenances; possession and
enjoyment.--

(5) A local ordinance or regulation may not establish any
limitation on the ability of unit owners or an association to
permit guests, licensees, members, or invitees to use or access
their units or common elements for the purpose of accessing a
public beach or private beach adjacent to the condominium.

===== T I T L E A M E N D M E N T =====

On line 1078, after the semicolon insert:
Amending s.718.106, F.S.; prohibiting local ordinances that
limit the access of certain persons to beaches that adjoin
condominiums;

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION ✓ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

(A)

Council/Committee hearing bill: Economic Development, Trade &
Banking Committee
Representative(s) Kottkamp offered the following:

**Amendment to Amendment (1) by Representative Kottkamp (with
title amendments)**

Insert between lines 195 and 196:

Section 6. Present subsections (18) through (27) of
section 719.103, Florida Statutes, are redesignated as
subsections (19) through (28), respectively, and a new
subsection (18) is added to that section, to read:

719.103 Definitions.--As used in this chapter:

(18) "Equity facilities club" means a club comprised of
recreational facilities in which proprietary membership
interests are sold to individuals, which membership interests
entitle the individuals to use certain physical facilities owned
by the equity club. Such physical facilities cannot include a
residential unit or accommodation. For purposes of this
definition, the term "accommodation" shall include, but is not
limited to, any apartment, residential cooperative unit,
residential condominium unit, cabin, lodge, hotel or motel room,
or any other accommodation designed for overnight occupancy by
one or more individuals.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1b)

Section 7. Section 719.507, Florida Statutes, is amended to read:

719.507 Zoning and building laws, ordinances, and regulations.--All laws, ordinances, and regulations concerning buildings or zoning shall be construed and applied with reference to the nature and use of such property, without regard to the form of ownership. No law, ordinance, or regulation shall establish any requirement concerning the use, location, placement, or construction of buildings or other improvements which are, or may thereafter be, subjected to the cooperative or equity facilities club form of ownership, unless such requirement shall be equally applicable to all buildings and improvements of the same kind not then, or thereafter to be, subjected to the cooperative or equity facilities club form of ownership. This section does not apply if the owner in fee of any land enters into and records a covenant that existing improvements or improvements to be constructed shall not be converted to the cooperative form of residential ownership prior to 5 years after the later of the date of the covenant or completion date of the improvements. Such covenant shall be entered into with the governing body of the municipality in which the land is located or, if the land is not located in a municipality, with the governing body of the county in which the land is located.

===== T I T L E A M E N D M E N T =====

On line 1092, after the semicolon insert:
amending s. 719.103, F.S.; defining the term "equity facilities club"; amending s. 719.507, F.S.; prohibiting laws, ordinances, or regulations that apply only to improvements that are or may be subjected to an equity facilities club form of ownership;

COMMITTEE MEETING REPORT

Economic Development, Trade & Banking Committee

4/5/2006 4:45:00PM

Location: 306 HOB

HB 1019 CS : Deceptive and Unfair Trade Practices

☒ *Favorable*

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Aaron Bean			X		
Dorothy Bendross-Mindingall	X				
Phillip Brutus	X				
Faye Culp	X				
Joyce Cusack	X				
Don Davis	X				
Nancy Detert			X		
Michael Grant	X				
Adam Hasner				X	
Charlie Justice			X		
Frank Peterman			X		
John Quinones	X				
Ken Sorensen	X				
Trudi Williams	X				
Gus Bilirakis (Chair)	X				
Total Yeas: 10 Total Nays: 0					

Committee meeting was reported out: Wednesday, April 05, 2006 6:44:38PM

COMMITTEE MEETING REPORT
Economic Development, Trade & Banking Committee

4/5/2006 4:45:00PM

Location: 306 HOB

HB 1109 : Title Loan Lenders

<input checked="" type="checkbox"/> <i>Favorable</i>					
	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Aaron Bean			X		
Dorothy Bendross-Mindingall	X				
Phillip Brutus	X				
Faye Culp	X				
Joyce Cusack	X				
Don Davis		X			
Nancy Detert			X		
Michael Grant	X				
Adam Hasner	X				
Charlie Justice			X		
Frank Peterman			X		
John Quinones		X			
Ken Sorensen	X				
Trudi Williams		X			
Gus Bilirakis (Chair)		X			
Total Yeas: 7		Total Nays: 4			

Appearances:

Title Loan Lenders

Don Saxon (State Employee) - Information Only

Office of Financial Regulation

Fletcher Building

Tallahassee FL 32399

Phone: 850-410-9769

Title Loan Lenders

Osjha Anderson - Proponent

LoanMax

3440 Preston Ridge Road Suite 500

Alpharetta GA 30005

Phone: 678-823-4668

Title Loan Lenders

Brad Ashwell (Lobbyist) - Opponent

Florida Public Interest Research Group

926 E. Park Ave.

Tallahassee FL 32301

Phone: 850-224-3321

Committee meeting was reported out: Wednesday, April 05, 2006 6:44:38PM

COMMITTEE MEETING REPORT
Economic Development, Trade & Banking Committee

4/5/2006 4:45:00PM

Location: 306 HOB

Title Loan Lenders

Lynn Drysdale (Lobbyist) - Opponent

Jacksonville Area Legal Aid

126 West Adams Street

Jacksonville FL 32202

Phone: 904-356-8371 x306

Committee meeting was reported out: Wednesday, April 05, 2006 6:44:38PM

COMMITTEE MEETING REPORT
Economic Development, Trade & Banking Committee

4/5/2006 4:45:00PM

Location: 306 HOB

HB 1553 : Black Business Investment

☒ *Temporarily Deferred*

Committee meeting was reported out: Wednesday, April 05, 2006 6:44:38PM

COMMITTEE MEETING REPORT
Economic Development, Trade & Banking Committee

4/5/2006 4:45:00PM

Location: 306 HOB

HB 7213 : Quick Action Closing Fund

<input checked="" type="checkbox"/> <i>Favorable</i>					
	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Aaron Bean			X		
Dorothy Bendross-Mindingall	X				
Phillip Brutus	X				
Faye Culp	X				
Joyce Cusack	X				
Don Davis	X				
Nancy Detert			X		
Michael Grant	X				
Adam Hasner				X	
Charlie Justice			X		
Frank Peterman			X		
John Quinones	X				
Ken Sorensen	X				
Trudi Williams	X				
Gus Bilirakis (Chair)	X				
Total Yeas: 10		Total Nays: 0			

Committee meeting was reported out: Wednesday, April 05, 2006 6:44:38PM

COMMITTEE MEETING REPORT
Economic Development, Trade & Banking Committee

4/5/2006 4:45:00PM

Location: 306 HOB

Summary:

Economic Development, Trade & Banking Committee

Wednesday April 05, 2006 04:45 pm

HB 839 CS Favorable With Committee Substitute

Yeas: 10 Nays: 0

Amendment 1 Adopted Without Objection

Amendment 1a Adopted Without Objection

Amendment 1b Adopted Without Objection

HB 1019 CS Favorable

Yeas: 10 Nays: 0

HB 1109 Favorable

Yeas: 7 Nays: 4

HB 1553 Temporarily Deferred

HB 7213 Favorable

Yeas: 10 Nays: 0

Committee meeting was reported out: Wednesday, April 05, 2006 6:44:38PM